

## SECOND READING SPEECH – HON. DR VANESSA GOODWIN MLC

### *Health Practitioners Tribunal Amendment Bill 2015*

Mr President, I move that the Bill be read a second time.

This Bill makes amendments to the *Health Practitioners Tribunal Act 2010* in relation to the appointment of the Chairperson and Deputy Chairperson positions on the Health Practitioners Tribunal.

Members may recall that in 2010, Parliament passed legislation to allow Tasmania to become a part of the National Registration and Accreditation Scheme for health professionals. This scheme regulates the following health professions:

- Chiropractors;
- Dental practitioners;
- Medical practitioners;
- Nurses and Midwives;
- Optometrists;
- Osteopaths;
- Pharmacists;
- Physiotherapists;
- Podiatrists;
- Psychologists;
- Aboriginal and Torres Strait Islander health practitioners;
- Chinese medicine practitioners (including acupuncturists, Chinese herbal medicine practitioners and Chinese herbal dispensers);
- Medical radiation practitioners; and
- Occupational therapists.

The Health Practitioners Tribunal Act was introduced as part of the implementation of the scheme. The Act establishes the Health Practitioners Tribunal to hear and determine disciplinary matters and complaints against practitioners from any of the professions mentioned above and to review decisions made or matters referred by the national boards regulating the professions.

Mr President, the Tribunal is presided over by a Chairperson and/or Deputy Chairperson, both of whom are appointed by the Minister for Justice based upon the recommendation of the Chief Magistrate. The Act requires a person to be a Magistrate in order to be appointed to the Chairperson and Deputy Chairperson roles. The Bill before us today is concerned with those roles on the Health Practitioners Tribunal.

Since the Act commenced in 2010, the functions of the Health Practitioners Tribunal have been exercised by the Workers Rehabilitation and Compensation Tribunal. The reason for this decision was that the Workers Rehabilitation and Compensation Tribunal was seen to have the necessary infrastructure and its Commissioners the requisite legal experience to deal with the types of issues that would come before the Health Practitioners Tribunal.

To enable the Workers Rehabilitation and Compensation Tribunal to carry out the functions of the Health Practitioners Tribunal, the Chief Commissioner of the Workers Rehabilitation and Compensation Tribunal is appointed as the Chairperson of the Health Practitioners Tribunal and the Commissioner is appointed as the Deputy Chairperson.

Mr President, as I have mentioned, the current requirement for appointment to those roles is that the person must be a Magistrate. Neither the Chief Commissioner nor the Commissioner are permanent Magistrates. To enable them to be appointed to their roles on the Health Practitioners Tribunal, they have had to be appointed as temporary Magistrates pursuant to section 4 subsection (4) of the *Magistrates Courts Act 1987*.

This is not ideal in the long term. The temporary Magistrate appointments are only made for specific periods of time. Once they expire, the Chief Commissioner and Commissioner must be reappointed as temporary Magistrates or they cannot continue in their roles on the Health Practitioners Tribunal.

There is no certainty that the temporary Magistrate appointments will continue to be made in the future as there is some concern that the ongoing nature of these temporary Magistrate appointments is at odds with them being made for temporary purposes.

In the event that the Chief Commissioner and Commissioner are not reappointed as temporary Magistrates, the likely outcome is that the Health Practitioners Tribunal will have to be transferred to the Magistrates Court. This may cause considerable disruption, delays and cost.

The amendments proposed by this Bill are intended to overcome these difficulties and provide greater certainty. The Bill provides greater flexibility in the Chairperson and Deputy Chairperson appointments by expanding the pool of potential candidates and adding an additional category of persons who can be appointed to these positions.

Under the amendments, a person will be able to be appointed as Chairperson or Deputy Chairperson if he or she is an Australian lawyer of not less than 5 years' standing as an Australian legal practitioner.

The terms "Australian lawyer" and "Australian legal practitioner" are defined in the *Legal Profession Act 2007*. "Australian lawyer" is defined as a person who is admitted to the legal profession under the Legal Profession Act or a corresponding law (that is, a law of another jurisdiction that corresponds to, or has been declared by regulation to correspond to, the relevant provisions of the Legal Profession Act). "Australian legal practitioner" is defined as an Australian lawyer who holds a current local or interstate practising certificate.

Mr President, many other Tribunals and Boards, including the Workers Rehabilitation and Compensation Tribunal, the Anti-Discrimination Tribunal, the Guardianship and Administration Board, the Mental Health Tribunal and the Resource Management and Planning Appeal Tribunal, allow legal practitioners of a specified number of year's standing to be appointed to Chair or President roles. These amendments bring the

appointment requirements in relation to the Health Practitioners Tribunal in line with those other bodies.

The proposed amendments will enable the Chief Commissioner and Commissioner to be considered for appointment to their current roles on the Health Practitioners Tribunal in their own right and without the additional hurdle of temporary Magistrate appointments. As senior lawyers, they both fall within the proposed new category and, indeed, had to meet similar requirements for their appointments to the Workers Rehabilitation and Compensation Tribunal.

Mr President, the amendments to allow legal practitioners to be appointed to the Chairperson and Deputy Chairperson positions are the substantive aspect of the Bill. However, there are some other amendments made by the Bill to reflect the new appointment requirements.

Schedule 1 of the Act sets out the terms of appointment of the Chairperson and Deputy Chairperson of the Health Practitioners Tribunal, including the circumstances in which the Chairperson or Deputy Chairperson ceases to hold office. Schedule 1 currently provides that service in the office of the Chairperson or Deputy Chairperson is to be taken for all purposes to be service in the office of a Magistrate. The Bill clarifies that this is only the case where the person appointed to the Chairperson or Deputy Chairperson position is a Magistrate. It will not be applicable where the appointments are made on the basis of the new requirement, that is, persons who are Australian lawyers.

Schedule 1 also specifies the circumstances in which the Chairperson or Deputy Chairperson vacates office, one of which is where he or she ceases to be a Magistrate. The Bill modifies this provision to include the circumstances where the Chairperson or Deputy Chairperson ceases to be an Australian lawyer, for example, where he or she is struck off the roll.

Mr President, key stakeholders including the Law Society of Tasmania, the Chief Magistrate, the Chief Commissioner and Commissioner of the Workers Rehabilitation and Compensation Tribunal, the Tasmanian Board of the Medical Board of Australia, and the Australian Health Practitioner Regulation Agency have been consulted during the development of this Bill. There were no significant concerns raised in relation to the amendments and both the Tasmanian Board of the Medical Board of Australia and the Australian Health Practitioner Regulation Agency are supportive of the Bill.

This Bill makes amendments to the Health Practitioners Tribunal Act to provide for more flexibility in relation to the appointment of the Chairperson and Deputy Chairperson positions on the Health Practitioners Tribunal. The amendments are consistent with appointment provisions in relation to other Tasmanian Tribunals and Boards. In practice, the Bill will allow the Health Practitioners Tribunal to continue to operate as it has since its commencement.

Mr President, I commend the Bill to the Council.